

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DARREN C. DEMARIE,

Petitioner,

vs.

LYNN GUYER; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 20-48-H-BMM-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this case on December 17, 2020 (Doc. 13). Judge Johnston recommended that Defendants' Amended Petition (Doc. 9) should be DISMISSED without prejudice as unexhausted, and that the Clerk of Court should be directed to enter by separate document a judgment of dismissal. *Id.*

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United*

States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Reviewing for clear error and finding none,

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 13) are **ADOPTED IN FULL**. The Amended Petition (Doc. 9) is **DISMISSED** without prejudice as unexhausted. The Clerk of Court is directed to enter by separate document a judgment of dismissal. A certificate of appealability will be **DENIED**.

DATED this 19th day of January, 2021.



Brian Morris, Chief District Judge
United States District Court